REMARKS

Claims 12-18 have been amended and are pending in this application. Support for the amendments can be found throughout the specification, particularly in Examples 14 and 15 on pages 15-16. No new matter is added.

The Office Action required restriction from among the following groups:

I. Claims 12-15 and 18, drawn to compositions or kits comprising plasmids encoding the E2 protein, with or without other proteins, of the bovine diarrhea virus (BDV), classified in class 435, subclass 320.1; and

II. Claims 16 and 17, drawn to methods of inducing immunological responses by administering a plasmid encoding a BDV protein, and another vaccine, classified in class 435, subclass 320.1.

The claims have been amended to reflect Applicants' desire to pursue claims directed to bovine parainfluenza virus type 3 (PIV3 or BPI3), rather than BDV. Anticipating a similar requirement for restriction of the now pending claims, Applicants elect Group I, claims 12-15 and 18, with traverse, for further prosecution in this application. Applicants reserve the right to pursue continuation applications directed to non-elected subject matter and to BDV subject matter. It is understood that the process claims of Group II may be rejoined to the product claims of Group I following a finding that the product claims are allowable. Reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herewith.

As a traverse, it is noted that MPEP § 808.02 states, ". . . restriction is not required unless one of the following reasons appears:

1. Separate classification;
2. Separate status in the art; or
3. Different field of search . . ."

Contrary to the guideline provided by the MPEP, Groups I and II are classified in the same class and subclass. There is no evidence presented in the Office Action to demonstrate that the claims of the Groups have acquired separate status in the art. Further, the subject matter of the two groups will not encompass different fields of search. Thus, restriction is not appropriate.

Additionally, the Examiner's attention is further directed to the text of MPEP § 803 which, in part, states:

> If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits ...

A search of the Group I claims will necessarily involve a search of the Group II claims, which are classified in the same class and sub-class, and should therefore be rejoined to elected Group I. The result of the present restriction requirement are inefficiencies and unnecessary expenditures by both the Applicants and the PTO and extreme prejudice to Applicants (particularly in view of GATT, a shortened patent term may result in any divisional applications filed); and restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made in the Office Action and there are relationships between the claims of both Groups. Indeed, the search and examination of each Group is likely to be co-extensive and, in any event, would involve such interrelated art that the search and examination of the entire application can be made without undue burden on the Examiner. All of the preceding, therefore, mitigate against restriction.

In view of the foregoing, reconsideration and withdrawal of the restriction requirement and favorable examination of the pending claims on the merits are respectfully requested.

Respectfully submitted,

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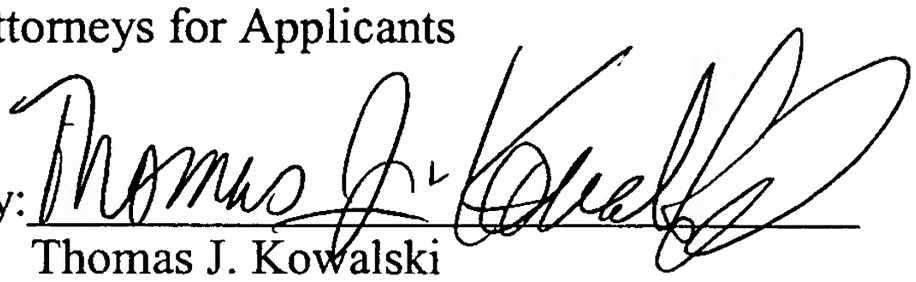
By: 

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims

12. (Amended) An immunogenic composition for inducing an immunological response against bovine parainfluenza[diarrhea] virus type 3 comprising at least one plasmid that contains and expresses *in vivo* in a bovine host cell nucleic acid [acid] molecule(s) having sequence(s) encoding bovine parainfluenza virus type 3 HN protein, or F protein, or HN and F proteins[bovine diarrhea virus E2 protein, or C, E1 and E2 proteins, or E1 and E2 proteins].

13. (Amended) The immunogenic composition according to claim 12 which comprises a plasmid that contains and expresses *in vivo* in a bovine host cell a nucleic acid molecule having a sequence encoding bovine parainfluenza virus type 3 HN protein[bovine viral diarrhea virus E2 protein].

14. (Amended) The immunogenic composition according to claim 12 which comprises a plasmid that contains and expresses *in vivo* in a bovine host cell nucleic acid molecule(s) having sequence(s) encoding bovine parainfluenza virus type 3 F protein[bovine viral diarrhea virus E1 and E2 proteins].

15. (Amended) The immunogenic composition according to claim 12 which comprises a plasmid that contains and expresses *in vivo* in a bovine host cell nucleic acid molecule(s) having sequence(s) encoding bovine parainfluenza virus type 3 HN and F proteins[bovine viral diarrhea virus C, E1 and E2 proteins].

16. (Amended) A method for inducing an immunological response in a bovine comprising: administering to said bovine a vaccine selected from the group consisting of a live whole vaccine, an inactivated whole vaccine, a subunit vaccine, and a recombinant vaccine; and thereafter, administering to said bovine an immunogenic or vaccine composition as claimed in any one of claims 12-15 [or 17-18].

17. (Amended) A method for inducing an immunological response in a bovine comprising administering to said bovine an immunogenic or vaccine composition as claimed in any one of claims 12-15[16 or 18].

18. (Amended) A kit comprising (i) an immunogenic composition according to any one of claims 12-15[17], and (ii) a bovine vaccine selected from the group consisting of a live whole vaccine, an inactivated whole vaccine, a subunit vaccine, and recombinant vaccine.